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February 25, 2015

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**Re: Tentative Waste Discharge Requirements for
Root Creek Water District, Riverstone Wastewater Treatment Facility
Madera County**

Dear Ms. Creedon and Ms. Carpenter:

This letter is submitted on behalf of Richard Gunner. It is in response to the Notice issued by the Central Valley Regional Water Quality Control Board (the "Board") on February 4, 2015, and concerns the proposed Tentative Waste Discharge Requirements described above, and the Board's intended CEQA evaluations of an Addendum to the Environmental Impact Report for the Gateway Village Project, Madera, California (the "EIR Addendum"). That waste water treatment plant will support development of a project originally authorized as the Gateway Village Project (the "Project").

Please include this letter and the enclosed materials in the Record of Proceedings for the Project and please include copies of these materials in the Board's agenda materials for this matter. Our office also intends to provide evidentiary testimony on behalf of Mr. Gunner before the Board at the April 16/17 2015 hearing on this matter.

1. Incorporation of Prior Submittal. On January 14, 2015, I submitted a letter and several enclosures (the "Prior Submittal"). A copy of the Prior Submittal is resubmitted with this letter and incorporated by this reference. The EIR Addendum did not reference or address many elements of the Prior Submittal. Those items remain relevant and significant evidence in support of the need to evaluate the significant changes proposed for the Project through preparation and public comment on a Supplemental or Subsequent EIR.

2. The Proposed EIR Addendum Understates Lost Recharge. The EIR Addendum, under the heading "A potential change in the water balance within Root Creek Water District", partially acknowledges an important issue addressed in the Prior Submittal. Because of the change in the Project, the Initial Plant will send approximately 300 acre-feet, per annum, of effluent to percolation ponds. The adopted Water Supply Assessment for the Project had assumed all of this effluent would be stored in lined ponds and recycled for agricultural and other irrigation uses. Based on engineering analysis provided by Provost and Pritchard (the engineers for

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the Project), it can be assumed one-half of all the effluent delivered to the percolation ponds (after accounting for evaporation), will be lost to the relevant aquifer. This is an annual loss of 150 acre-feet of recharge.

However, the EIR Addendum does not acknowledge that the loss of recharge to the relevant aquifer will continue beyond the Initial Plant operations, and through all future phases of the proposed WWTF. During these future phases, some of the effluent will be recycled for agricultural and other irrigation. However, all phases of the WWTF propose a new plan to use percolation ponds. This is a change in the original Project, which had assumed the use of lined ponds in the Certified EIR and the relevant Water Supply Assessment. It is a change that results in loss of recharge to the relevant basin to an extent not referenced in the EIR Addendum.

As detailed in the Prior Submittal, during the 0.9 MGD phase of the WWTF operations (beyond the Initial Plan), use of percolation ponds rather than lined ponds will result in 403 acre-feet per annum of effluent delivered to the percolation ponds. After accounting for assumed evaporation, 326 acre-feet per annum of effluent, which the WSA assumed would be applied to conjunctive use, is being percolated. This results in 3,264 additional acre-feet that will be lost over the remaining 10 years of the WSA's analyzed 20-year timeframe.

When the Ultimate Plant expands from 0.9 MGD to 1.8 MGD, 829 acre-feet per annum of effluent will be delivered to ponds for percolation. After accounting for assumed evaporation, 671 acre-feet per annum of effluent, which the WSA assumed would be applied to conjunctive use, is being percolated.

Based on engineering analysis provided by Provost & Pritchard Engineering (the Project's engineer), one-half of any percolated effluent will be lost to the relevant water basin. Therefore, changes in the Project, that propose use of percolation ponds for all of its phases, will result in a significant loss of water to the basin. This aspect of the change in the Project, for periods beyond the initial phase, and the impact of these changes, was not referenced in the EIR Addendum. The EIR Addendum only referenced the loss of the waters to the basin occurring during the initial phase. It significantly understated and failed to analyze the environmental impacts caused by the use of percolation ponds in the later phases of the WWTF.

3. The Proposed Tentative Order Erroneously References a Nonexistent Mitigation Measure. The Tentative Order, at Item 33, makes an incorrect reference to a nonexistent mitigation measure. Specifically, Item 33 includes the following statement: *"As a mitigation measure discussed in the Environmental Impact Report for the Project, Root Creek Water District has a contractual agreement with Paramount Land Company to purchase up to 7,000 acre-feet of surface water annually from supplies controlled by Paramount and banked in Kern County, and*

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deliver it via the Madera Canal and Later 6.2 to agriculture areas within the District to replace historical groundwater supplies and reduce groundwater overdraft within the District".

Enclosed is a copy Madera County Board of Supervisor's Resolution 2007-202, which includes a copy of the relevant findings for the Certification of the Project EIR. Impact 4.8.4, on page 27, addresses the Project's impacts on groundwater.

The adopted findings confirm the Certified EIR did not adopt a mitigation measure to commit Root Creek to deliver surface water to the agricultural areas within the District. The findings acknowledge there is capacity to deliver at least 3,400 acre-feet annually, based in part on the intended 100% conjunctive reuse of effluent. However, no mitigation measure was adopted to enforce such arrangements. Reference to a mitigation measure in the Item 33 of the Tentative Order is therefore erroneous.

Because adopted mitigation measures must be enforceable, misstating the existence of a mitigation measure will lead the public to believe there are enforcement mechanisms which do not exist. There is no enforceable mitigation measure requiring Root Creek to deliver surface water to offset water lost by the Project's new proposal to use percolation ponds. As a result, the materials being submitted to the Board understates the potential for a negative impact to the groundwater aquifer, and the potential degradation of the aquifer, resulting from the new adoption of percolation ponds for all phases of the WWTF.

4. The EIR Addendum Inappropriately Relies on Unenforced Commitments of Root Creek to Offset New Impacts on the Groundwater Aquifer. As noted in item 2 above, the EIR Addendum acknowledged some, but not all, of the potential loss of groundwater recharge to the aquifer resulting from Project's new adoption of percolation ponds. However, it declares this loss of the recharge to be of no consequence. The EIR Addendum relies solely on what it describes as a commitment by Root Creek Water District to apply techniques to offset the Project's groundwater use. However, the source of this "commitment", the party to whom the "commitment" was made, and the mechanism of enforcing the "commitment", are all unidentified and unexamined by the EIR Addendum.

The true nature of the supposed "commitment" was detailed in the Prior Submittal. One element of the relevant "commitment" was the program set forth in the Water Supply Assessment. The Water Supply Assessment assumed the full reuse of the effluent, without regard to losses from percolation ponds (because the ponds were to be lined). The commitment is detailed at section 9.3 of the Water Supply Assessment. The commitment is in fact violated by the Project's request that the Board authorize a modification of this aspect of the WWTP design.

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Section 8.3 of the WSA also discusses water conservation measures and quotes from the Gateway Village 2006 Infrastructure Master Plan. It states: "all wastewater effluent shall be conjunctively reused within RCWD either as reclaimed water or for agricultural irrigation". This is a further commitment violated by the Project's request that the Board modify this aspect of the WWTF's originally assumed design.

The EIR Addendum obviously intends to reference other perceived commitments that are not presently being proposed for violation. The Addendum's referenced commitments presumably relate to a commitment to deliver offsetting surface supplies when the promise to make conjunctive reuse of all effluent is broken. This supposed commitment is sourced in the Infrastructure Master Plan adopted by the County as an element of the Project's Specific Plan.

The IMP was enclosed as Exhibit D in the Prior Submittal. At page 17, the IMP states that a groundwater recharge program is being instituted to replace the 3,400 acre-feet of overdraft, on a five-year rolling average basis. The IMP does not incorporate any commitment by Root Creek Water District to import 3,400 acre-feet of surface water, annually, on a five-year rolling average basis, to address this existing overdraft. Instead, it states the program will rely, to a substantial degree, on conjunctive reuse of the effluent. The conjunctive reuse of the effluent is being substantially impacted by the use of percolation ponds, even during the phases when there is some conjunctive reuse.

More importantly, page 29 of the IMP discusses the extent of commitment to surface water imports in more detail. It states that a proposed in-lieu system will deliver approximately 3,304 acre-feet of irrigation water annually. It further states, ***"The commitment of the Project through combined groundwater overdraft reduction programs is to perform 3,400 AF/year of recharge as measured on a rolling five-year-average basis, an amount adequate to eliminate the current groundwater deficit within RCWD."***

In limitation of that commitment, it further states ***"There is no intent to fully-utilize these in-lieu facilities every single year, and there is no commitment to increase the 3,400 AF/year contribution from the combined groundwater overdraft reduction programs toward district-wide overdraft even if subsequent study shows the estimated overdraft to have increased"***.

The Project's design change will diminish the conjunctive reuse of effluent, and reduce this source of recharge to the basin. There is no commitment by Root Creek Water District in the IMP, in the Water Supply Assessments, or in any mitigation measure, or otherwise, in favor of the County or any other public entity, to make up for the loss to the basin of this source of recharge. The EIR Addendum states that this

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is a commitment of the "Project". However, that was a commitment tied to design elements of the Project that are now being proposed for modification.

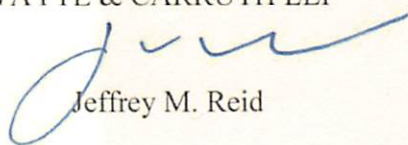
Much is made about the contracts Root Creek has with Paramount Land Company to deliver certain waters to Root Creek. However, there is no commitment by Root Creek to deliver any of those waters to the environs of the Project. The IMP states the following regarding the commitments to use of Paramount water to benefit the aquifer: *"It is again noted that the back-up water supply is intended as a fail-safe, and under ideal or average conditions will not have to be used to maintain the required rolling-average water balance. It has been put in place only to assure stakeholders that the project's water supply is not at risk in even a series of dry and very-dry years."* It is clearly not an enforceable commitment or mitigation measure to use such waters.

There is no enforceable mitigation measure or binding commitment by Root Creek, to make up for losses resulting from the change to percolation ponds. The EIR Addendum is faulty in its reliance on commitments that do not exist and which are not enforceable. It is similar to the Tentative Order's error in misstating that a mitigation measure was adopted to address such matters.

5. Conclusion. The EIR Addendum omits a description of material elements of the proposed change in the Project, and the significant environmental impact of those changes. It also incorrectly relies upon unfounded commitments by Root Creek Water District to address the environmental impacts of these changes. The record does not support statements in the EIR Addendum or the Tentative Order that enforceable commitments or mitigation measures exist.

For the reasons detailed above and in the Prior Submittal, there are significant environmental impacts that result from modifying the Project to use percolation ponds and reduce its conjunctive reuse of effluent. The proposed EIR Addendum fails to adequately disclose or address those matters, and is insufficient for that purpose. Those changes require a CEQA evaluation that must be supported by a Subsequent or Supplemental EIR. Substantial evidence supporting this conclusion is detailed above and in the Prior Submittal.

Sincerely,
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP



Jeffrey M. Reid